

20 Planning, Zoning, and Redevelopment

THE NEED FOR PLANNING

Early American cities were relatively compact by today's standards. Their land areas were limited primarily by how far people could walk in going about their daily activities. As time progressed, urban populations surged due to industrialization and immigration. As city centers became overcrowded, housing conditions declined, sanitary systems were rendered inadequate, and there was a lack of parks and open space. Some cities turned into very unpleasant and unhealthy places to live.

In the 1880's with the coming of mechanized transportation (chiefly the electric trolley on rails), many people moved to cleaner, less congested suburban areas. Land speculation flourished and urban sprawl went unchecked. Sprawl intensified when automobiles became widely available. The development of the automobile was paralleled by advancing techniques in road construction, bridge building, tunneling, reinforced concrete construction, fireproofing and electric elevators. Cities not only expanded farther out, but also grew upward.

By the beginning of the twentieth century, civic leaders perceived the need for improving their urban environments. City planning, which had existed for centuries, took on added importance in what became known as the "City Beautiful" movement. The City Beautiful movement stressed public works and civic improvements as a way of making cities more livable.

About the same time, city development plans gained prominence. City plans evolved into "comprehensive plans": expressions of community goals and values covering the planning needs of both public and privately owned land.

The comprehensive plans contain proposals and policies addressing the numerous components of an urban area's physical development. These proposals and policies are a rational response to the problems inherent in urbanization.

GENERAL PLANS

In California, comprehensive plans are known as "general plans." By state law, every city and county must adopt its own general plan for long-term physical development. The plan must cover a local government's entire planning area. At a minimum, a planning area includes all land subject to the local government's jurisdiction and "any land [outside the city's or county's] boundaries which in the planning agency's judgment bears relation to its planning." (California Government Code Section 65300). The general plan is extremely important because all land use decisions of the city or county must be consistent with the general plan. It has been described by California courts as being "a constitution for all future developments."

State law also requires that each local general plan address a comprehensive list of development issues falling under seven major categories or "elements." These include: land use; circulation; housing; conservation; open space; noise; and safety. Depending upon the jurisdiction's location, its general plan may also be required to address elements such as coastal development and the protection of mineral resources. In addition, the general plan may include other concerns such as recreation, historic preservation, public services, and hazardous waste management. The general plan,

together with all its elements and parts, must constitute an integrated, internally consistent and compatible statement of development policies for a planning area.

Preparation

Typically, general plans are arranged according to the following four basic components:

1. background data on and analysis of the local economy, existing and projected demographics (the characteristics of human population such as size, growth, density, distribution and vital statistics), existing land use, projected land use needs, existing and projected environmental conditions, and the capacities of public facilities and services (e.g., sewer, water, and storm drainage systems, highways, transit, police and fire protection, and schools);
2. a statement of goals and development policies based on the analysis of data that guides community development decision making;
3. diagrams that reflect and support the general plan's statement of development policies (e.g., planned land uses, circulation, noise level contours); and
4. a program of measures that will be subsequently adopted to implement the general plan (e.g., proposed rezonings, specific plans, public works and other capital improvements, public financing techniques, etc.).

Some general plans are developed as a single document for the entire jurisdiction, while others are composed of a combination of documents such as a jurisdiction-wide policy plan and a series of area or community plans, which together cover the entire jurisdiction. Individual general plan formats differ from jurisdiction to jurisdiction based on local conditions, needs, and philosophy.

Similarly, local conditions and preferences dictate who actually prepares a general plan document. Each local planning agency is ultimately responsible for developing a plan. Some planning departments prepare their plans in-house, while others assign all or part of the work to consultants or other planning agencies.

Hearings - Adoption or Denial

Once the plan is written, the planning commission holds at least one public hearing on the document. The commission then forwards the plan with recommendations for local action to the local legislative body, which also conducts at least one public hearing and then either adopts or denies the plan by resolution. In some charter cities, the planning commission may be authorized to take final action on the plan without holding a public hearing.

Importance of the General Plan

A general plan is the basis for fitting together in organized relationships a myriad of individual development projects. It is the rationale behind a city's or county's development regulations and decisions; a statement of local values that sets forth the future direction of community development. It helps eliminate inefficient resource allocations associated with random or untimely development. Finally, a general plan promotes fairness in the development entitlement process by discouraging capricious decision making.

Until fairly recently, general plans were idealistic and inspirational, but had little legal effect. Community development decisions such as rezonings, subdivision map approvals, and public works projects were not required to be consistent with the plan.

Legislation, court decisions and legal opinions have established the general plan as the local constitution for a community's physical development. State law now requires that zoning ordinances of general law cities and Los Angeles be consistent with the general plan. In addition, every city and county in the state, except Los Angeles, is prohibited by state law from approving a subdivision map proposal unless the map is found to be consistent with the general plan. Furthermore every city and county, including Los Angeles, must deny a subdivision map proposal which the city or county finds to be inconsistent with the general plan. A court decision in 1980 established that public works of all cities and counties must be consistent with the plan.

A 1984 California Appellate Court decision held that a local government may not grant a conditional use permit if the general plan inadequately addresses pertinent state-mandated issues. Other decisions of the late 1970's and the 1980's have also prohibited various development projects due to the inadequacy of local general plans. Consequently, it is now in the best interests of real estate licensees, developers, local governments, and the public to make sure that general plans are legally adequate and that their implementing actions meet the consistency requirements.

Amendment to General Plans

Amendments to mandatory elements of general plans are limited to no more frequently than four times during any calendar year. Although most amendments are initiated by city or county planning agencies, an amendment may be initiated in any manner specified by the local legislative body. Additionally, amendment by initiative measure has been upheld by the California Supreme Court. However, such an initiative-based general plan amendment must conform with all substantive requirements imposed on general plan amendments. If a development agreement is in effect, its terms supersede amendments to the general plan.

General Plan Implementation

Zoning is one of the best known and most frequently used tools for carrying out a general plan's land use proposals. Subdivision regulations, property tax incentives, land banking, transfer of development rights programs, etc. also enact a general plan's land use policies. As noted earlier, however, general plans are comprehensive. They address development issues that go beyond land use, such as traffic circulation, public works, public safety, and water reclamation. Implementation techniques, including specific plans, public finance measures, and capital improvement programs tackle more than just land use planning issues. The following is a discussion of two of the more popular implementation tools: specific plans and zoning.

After a municipality has adopted a general plan, it may prepare *specific plans* to systematically implement the general plan. Specific plans usually pertain to a particular development site or sub-area of the general plan's planning territory. They contain a text and a diagram or diagrams detailing development specifications for, among other things, land use and supporting infrastructure. They may also include phasing programs which coordinate the timing of development with the general plan's long-term outlook. Specific plans have a program of implementation measures (e.g., proposed rezonings, public works, and public finance). Specific plans may take the form of: detailed planning policy documents; zoning-like land use regulations that take the place of zoning; urban development and design guidelines; capital improvement programs; and combined policy and regulatory programs for guiding and controlling urban development.

Although expensive to prepare and sometimes difficult to administer, specific plans are increasingly popular general plan implementation tools. Although specific plans contain planning provisions, they are not part of the general plan, nor should they be confused with area or community plans which are sub-units of a general plan. As in the case of a zoning ordinance, a specific plan is subordinate to and must conform to the general plan. However, zoning, public works, tentative subdivision maps, parcel maps, and development agreements must be consistent with an applicable specific plan. With regard to the hierarchy of planning documents, a specific plan falls somewhere between the general plan and some of the most common general plan implementation mechanisms. Specific plans have two distinct advantages over other general plan implementation tools:

- They bring together in one document many of the factors necessary for successfully developing a land use project.
- By matching proposed land uses with infrastructure, they help eliminate costly over or undersizing of public utilities and streets.

Zoning

Most California cities and counties have adopted ordinances that divide their jurisdictions into land use districts or zones. Within each zone a specific set of regulations control the use of land. There are often zones for single-family residences, multi-family dwellings, commercial uses, industrial activities, open space or agriculture and, sometimes, mixed uses.

The authority for local zoning is derived from the police power in Article XI, Section 7 of the California Constitution. State law augments the authority by setting forth minimum standards and procedures for exercising zoning regulations. This provides cities and counties with a great deal of local discretion in controlling land use. Nevertheless, zoning, as a police power action, is invalid unless it rationally promotes the public health, safety, and welfare.

A zoning ordinance consists of a map and a text. The map identifies and delineates the boundaries of the various zones within a city or county. The text specifies zoning ordinance amendment and administrative procedures, and sets forth the characteristics of each zoning category such as: permitted land uses; land uses that require conditional use permits; minimum parcel sizes; building height limitations; lot coverage limits; building setback standards; and housing unit and building densities.

While the nature of zoning ordinances is fairly well known to the general public, the relationship of zoning to the general plan may not be as apparent. A zoning ordinance may appear to duplicate the general plan, as both are concerned with land use. The zoning ordinance and the general plan each have texts setting forth development standards. Both also have community land use maps and map-like diagrams.

However, zoning ordinances are very different from the general plan. The general plan covers a much wider range of land use issues and looks much further into the future of a land use area. The general plan is policy-oriented, setting forth in general terms the context in which site-by-site decisions are made. A zoning ordinance regulates land use from the viewpoint of the individual project site. Therefore, a zoning ordinance is merely one of a variety of measures used to implement the general plan. The general plan provides an overall perspective of the community-wide consequences of individual rezonings which are commonly initiated by local governments following an amendment or revision of the general plan. Rezonings are sometimes necessary for maintaining

zoning ordinance consistency with the general plan, although they are more commonly initiated by individual property owners or developers.

Zoning is inherently inflexible. With the exception of “charter cities,” all cities and counties are subject to the same basic zoning procedures and statutory requirements (including mandatory noticed public hearings before a local planning commission and city council or board of supervisors). Zoning standards must also be applied uniformly, while at the same time recognizing that different land parcels have their own particular characteristics. Over the years, a variety of methods have evolved to make zoning more responsive and accommodating to the many unique circumstances involving land use. “Floating zones,” special purpose overlay or combining zones, mixed-use development, building block zoning and planned unit developments exemplify some of these techniques.

Typically, different categories of uses are established within a particular zoning district. These are most often primary permitted uses, conditional uses and accessory uses. Permitted uses are those allowed as a matter of right within the district. Conditional uses are those not allowed as a matter of right, but which may be allowed by special permit from a local administrative body usually after a public hearing as to the propriety thereof. The agency can impose conditions on the proposed use, thus using greater flexibility in applying the zoning criteria. Accessory uses are uses incidental to a primary use permitted within the zoning district.

Zoning measures often establish various criteria with respect to types of uses, and also various aspects of the types of uses allowed, such as building heights, minimum lot sizes, set-backs from property lines, open space requirements, ratio of building floor areas to size of the lot, and other such criteria.

Planned unit development or planned development is a type of zoning classification. (This terminology also describes certain land development techniques.) As a zoning mechanism, planned unit development designation applies to the development of land as a unit where it is desirable to apply zoning regulations in a more flexible manner than those pertaining to other, more specific zoning classifications, and to grant diversification in the location of structures and other site qualities. The planned development zoning process is implemented by the local government’s review and approval of a master plan or “precise” plan for the designated area. Approval usually includes various detailed planning and development conditions to implement the precise plan.

If a property owner desires to use property in a manner not permitted under the applicable comprehensive zoning ordinance he may seek the administrative relief of a variance or conditional use permit or the legislative relief of an amendment to the zoning ordinance. Such a rezoning or zoning amendment would have to be consistent with the applicable general or specific plan. If the use sought is not consistent with the general or specific plan, then an amendment of the general or specific plan would also have to be obtained.

Zoning and Use Variances

Sometimes the size, irregular shape, surroundings, unusual topography, or location of a parcel of land is such that a use of the property cannot meet a zoning standard, such as a side-yard setback. This prevents the owner from enjoying the development privileges available to other property owners in the same vicinity and zone. The disadvantaged land owner may apply to the city or county for a waiver of the strict application of a zoning standard (or standards) to his/her property. If granted, the waiver or “zoning variance” provides the property owner with the same, but not additional, development privileges as neighboring parcels in the same zone.

In California, counties and general law cities are prohibited by state law from granting use variances that authorize a land use not otherwise permitted in a zone. For instance, if retail sales are prohibited in a single family residential zone, a zoning variance may not waive the restriction.

Conditional Use Permits

Zoning ordinances often list special land uses that are authorized in a zone subject to the granting of a conditional use permit or special use permit. Land uses requiring such permits are usually potentially incompatible with other activities existing in the zone. The proposed land use can create spillover effects such as noise, traffic congestion, or air pollution that adversely affect the public's health, safety, or welfare. Conditional use permits may authorize the use as long as the project proponents agree to abide by conditions that alleviate the spillover effects. If the project owner fails to comply with the conditions, the local government may revoke the permit. A conditional use permit is said to run with the land in that its provisions usually apply despite a change in ownership of the project site.

California Environmental Quality Act of 1970 (CEQA)

The California Environmental Quality Act of 1970 (CEQA) plays a major role in planning, zoning and other land-use permitting decisions by government agencies. A primary purpose of CEQA is to provide procedures and information to ensure that governmental agencies will consider and respond to the environmental effects of their proposed decisions. The state has adopted CEQA Guidelines to implement the CEQA process.

CEQA and the CEQA Guidelines affect planning whenever city or county officials exercise their judgment or discretion in approving, conditionally approving, or denying a development project which has the potential for creating a significant impact on the environment. Examples of discretionary projects include: adoption or amendment of general plans, specific plans, and zoning ordinances; granting of conditional use permits or zoning variances; approvals of tentative subdivision maps or parcel maps; and development agreement approvals. Ministerial projects, such as final subdivision maps and most building permits, are not subject to CEQA; nor are projects which are specifically exempted by state law and regulations.

One of the first CEQA-related steps in the processing of a discretionary project proposal is the preparation of an *initial study*. This study is a preliminary investigation and analysis, prepared by the lead government agency, of the project's potential for significant adverse effects on the environment. The initial study identifies the type of environmental document that will be necessary for evaluating the project.

If it is determined that the proposal will not have a significant adverse effect, the city or county prepares a *negative declaration* prior to making a decision on the development. As a means of expediting the review and approval process, under appropriate circumstances, the local agency can issue a "mitigated" negative declaration. A mitigated negative declaration is useful where the initial study has identified potentially significant effects on the environment, but revisions to the project have been made or are agreed to which will avoid or mitigate the potential effects to a point where no significant effect on the environment would occur. The permit approvals for the project would have to provide for measures which implement the specific mitigation measures.

If, however, the project may potentially cause one or more significant effects, the city or county must prepare and certify an *environmental impact report* (EIR) prior to the

development decision. An EIR identifies a project's significant, cumulative, and unavoidable environmental impacts, cites mitigation measures, and discusses project alternatives, including "no project." An EIR goes through two stages: draft and final. The draft EIR is prepared by the lead government agency and sets forth a variety of information on various issues required by the statute and Guidelines. It is circulated for public review and intra-agency consultation. After public review of the draft EIR, the lead agency must prepare written responses to comments on the environmental impact of the proposed project. The city or county must mitigate significant impacts by incorporating feasible changes or alterations into the project which avoid or substantially lessen the impacts. If one or more significant effects are unavoidable, the project may be approved only if the city or county decision-makers adopt a *statement of overriding considerations*. This statement allows decision-makers to balance a project's social and economic benefits against its environmental consequences. It is an indication of the elected official's environmental, social, and economic priorities with regard to the project.

Speeding Up Routine Matters

To reduce the workload of the local planning commission and legislative body, communities may authorize zoning administrators, zoning boards, or boards of zoning adjustment to handle many of the routine permits and appeals. These hearing bodies enable the local planning commission and city council or board of supervisors to spend more time on substantive planning policy and regulatory issues. Known as California's Permit Streamlining Act (commencing at California Government Code Section 65920), this change also quickens the planning pace by setting use permits and variances. The Subdivision Map Act and the California Environmental Quality Act also specify time limits.

REDEVELOPMENT

Community Redevelopment Law (Health and Safety Code Sections 33000, et seq.) authorizes a local government to adopt an ordinance subject to referendum to establish a redevelopment agency for the purpose of correcting blighted conditions in a project area within its territorial jurisdiction. A project area for redevelopment is not restricted to buildings, improvements, or lands which are detrimental to the public health, safety, or welfare, but may also consist of an entire area in which such conditions predominate. A project may also include lands, buildings, or improvements which are not detrimental to the public health, safety or welfare, but whose inclusion is found necessary for the effective redevelopment of the area of which they are a part.

The fundamental purposes of redevelopment include: the expansion of the supply of low and moderate income housing; the expansion of employment opportunities for jobless, underemployed, and low-income persons; and the development of an environment for the social, economic, and psychological growth and well-being of all citizens. To ensure that these objectives are met, the law provides special redevelopment financing and land use control authority. The use of this authority may affect the title, resale, and use of properties within a redevelopment project area. Under some circumstances, redevelopment powers and controls may extend to low- and moderate income housing developed, with agency assistance, outside of redevelopment project areas. Housing is the only activity a redevelopment agency may aid outside redevelopment areas.

In most instances, the city or county's elected officials function as the community redevelopment agency board of directors for the jurisdiction. For legal purposes, the redevelopment agency has status separate from that of the jurisdiction in which it is

established. The agency can sue and be sued; acquire property by eminent domain; dispose of property; construct public improvements; borrow money from any public or private source; and engage in a wide range of government and development activities mandated by redevelopment law. Enforcement of redevelopment law occurs through public monitoring of agency planning functions and annual reports, and civil legal challenges to perceived violations of state or federal requirements.

Housing Powers, Responsibilities, and Activities of Redevelopment Agencies

A community redevelopment agency (CRA) must replace, or cause to be replaced, low and moderate income housing which is lost as a result of redevelopment activities. Replacement must be accomplished within four years of the destruction, removal, rehabilitation or development of a dwelling unit. The agency must also provide relocation benefits to households or businesses displaced as a result of its activities.

Prior to 1988, properties developed or assisted by a CRA were subject to affordability requirements that were often contained in written agreements, and which were to be part of resale and leasing arrangements. The agency monitors these arrangements for continuing compliance. Beginning in 1988, affordability requirements on CRA units must be enforced through covenants, conditions, and restrictions in recorded deeds.

Funding Redevelopment Projects

Most redevelopment projects are funded through the issuance of tax allocation bonds secured by anticipated property tax revenues. This procedure, called *tax increment financing*, allows the CRA to receive any increases in project area property taxes which are a direct result of redevelopment activities. Tax allocation bonds are not obligations of the city or any public entity other than the CRA. They can be issued by a CRA without voter approval. Before issuing bonds to be secured by tax increments, the taxes being realized from all property within the designated redevelopment area are calculated and recorded. This tax base, plus an equivalent portion of the annual reassessments permitted under state law, continue to be allocated to the county and any other taxing entities entitled to property taxes from the area. Property tax increments resulting from redevelopment activities which may not begin to flow until two or three years after the project becomes active are allocated back to the CRA to pay for debts incurred to accomplish redevelopment of the project area.

Expenditure of tax increments. All CRAs, unless exempted under the law, must set aside not less than twenty percent (20%) of their tax increments in a special fund for low and moderate income housing. (See Health and Safety Code Sections 50052.5, 50093, and 50105.) In carrying out this mandate, the agency may exercise any or all of its powers, including the following: acquire and improve land or building sites; construct, acquire or rehabilitate buildings or structures; donate land to private or public persons or entities; provide subsidies to or for the benefit of low or moderate income households; develop land, pay principal and interest on bonds, loans, advances, other indebtedness, or pay financing and carrying charges; and maintain the community's supply of mobilehomes.

Although tax increments are the major source of redevelopment financing, there are other tools available to CRAs, such as general obligation lease revenue and mortgage revenue bonds; transient occupancy taxes; and shares of sales taxes generated within the project area.

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